

§ 655.1060

employment with the disqualified employer.

(2) A copy of the Administrator's notice to the Attorney General may also be sent by the Administrator to each school identified in the notice as a school from which F-1 students have been employed by the disqualified employer. Such copy of the Administrator's notice, upon receipt by the school, shall constitute sufficient notice for the DSO to revoke work authorization(s) and to refuse to issue new work authorization(s) for employment of F-1 students by that employer. Any school which issued or may issue work authorization(s) for employment of any F-1 student(s) by the employer, but which was not known by the Administrator to have done so, or notified by copy of the Administrator's decision, shall comply with any instructions from the Attorney General regarding revocation and nonissuance of work authorization for employment of any F-1 student(s) by the employer. In addition, any school (whether or not it received a copy of the Administrator's notice to the Attorney General regarding the employer) shall revoke F-1 work authorization(s) and refuse to issue new F-1 work authorization(s) for any employer which is identified as a disqualified employer on the list published periodically in the FEDERAL REGISTER by ETA.

(3) Continued or new employment of any F-1 student by the employer shall constitute a violation of the INA's employer sanctions provisions, irrespective of whether the F-1 student's work authorization has been formally revoked by the DSO or INS.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall cancel any F-1 attestation filed by the employer under subpart J of this part, shall not accept for filing any attestation submitted by the employer, and shall so notify the employer.

§ 655.1060 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart K of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no author-

20 CFR Ch. V (4-1-07 Edition)

ity to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Subpart L—What Requirements Must a Facility Meet to Employ H-1C Nonimmigrant Workers as Registered Nurses?

SOURCE: 65 FR 51149, Aug. 22, 2000, unless otherwise noted.

§ 655.1100 What are the purposes, procedures and applicability of these regulations in subparts L and M of this part?

(a) *Purpose.* The Immigration and Nationality Act (INA), as amended by the Nursing Relief for Disadvantaged Areas Act of 1999, establishes the H-1C nonimmigrant visa program to provide qualified nursing professionals for narrowly defined health professional shortage areas. Subpart L of this part sets forth the procedure by which facilities seeking to use nonimmigrant registered nurses must submit attestations to the Department of Labor demonstrating their eligibility to participate as facilities, their wages and working conditions for nurses, their efforts to recruit and retain United States workers as registered nurses, the absence of a strike/lockout or lay-off, notification of nurses, and the numbers of and worksites where H-1C nurses will be employed. Subpart M of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* The INA establishes a procedure for facilities to follow in seeking admission to the United States for, or use of, nonimmigrant nurses under H-1C visas. The procedure is designed to reduce reliance on nonimmigrant nurses in the future, and calls for the facility to attest, and be able to demonstrate in the course of an investigation, that it is taking timely and significant steps to develop, recruit, and retain U.S. nurses. Subparts L and M of this part set forth the specific requirements of those procedures.

(c) *Applicability.* (1) Subparts L and M of this part apply to all facilities that seek the temporary admission or use of

Employment and Training Administration, Labor

§ 655.1102

H-1C nonimmigrants as registered nurses.

(2) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement (NAFTA) apply, subparts L and M of this part shall apply to the entry of a nonimmigrant who is a citizen of Mexico under the provisions of section D of Annex 1603 of NAFTA. Therefore, the references in this part to “H-1C nurse” apply to such nonimmigrants who are classified by INS as “TN.”

§ 655.1101 What are the responsibilities of the government agencies and the facilities that participate in the H-1C program?

(a) *Federal agencies’ responsibilities.* The United States Department of Labor (DOL), Department of Justice, and Department of State are involved in the H-1C visa process. Within DOL, the Employment and Training Administration (ETA) and the Wage and Hour Division of the Employment Standards Administration (ESA) have responsibility for different aspects of the process.

(b) *Facility’s attestation responsibilities.* Each facility seeking one or more H-1C nurse(s) must, as the first step, submit an Attestation on Form ETA 9081, as described in § 655.1110 of this part, to the Employment and Training Administration, Director, Office of Workforce Security, 200 Constitution Ave. NW., Room C-4318, Washington, DC 20210. If the Attestation satisfies the criteria stated in § 655.1130 and includes the supporting information required by § 655.1110 and by § 655.1114, ETA shall accept the Attestation for filing, and return the accepted Attestation to the facility.

(c) *H-1C petitions.* Upon ETA’s acceptance of the Attestation, the facility may then file petitions with INS for the admission or for the adjustment or extension of status of H-1C nurses. The facility must attach a copy of the accepted Attestation (Form ETA 9081) to the petition or the request for adjustment or extension of status, filed with INS. At the same time that the facility files an H-1C petition with INS, it must also send a copy of the petition to the Employment and Training Administra-

tion, Administrator, Office of Workforce Security, 200 Constitution Avenue, NW., Room C-4318, Washington, DC 20210. The facility must also send to this same ETA address a copy of the INS petition approval notice within 5 days after it is received from INS.

(d) *Visa issuance.* INS assures that the alien possesses the required qualifications and credentials to be employed as an H-1C nurse. The Department of State is responsible for issuing the visa.

(e) *Board of Alien Labor Certification Appeals (BALCA) review of Attestations accepted and not accepted for filing.* Any interested party may seek review by the BALCA of an Attestation accepted or not accepted for filing by ETA. However, such appeals are limited to ETA actions on the three Attestation matters on which ETA conducts a substantive review (*i.e.*, the employer’s eligibility as a “facility;” the facility’s attestation to alternative “timely and significant steps;” and the facility’s assertion that taking a second “timely and significant step” would not be reasonable).

(f) *Complaints.* Complaints concerning misrepresentation of material fact(s) in the Attestation or failure of the facility to carry out the terms of the Attestation may be filed with the Wage and Hour Division, Employment Standards Administration (ESA) of DOL, according to the procedures set forth in subpart M of this part. The Wage and Hour Administrator shall investigate and, where appropriate, after an opportunity for a hearing, assess remedies and penalties. Subpart M of this part also provides that interested parties may obtain an administrative law judge hearing and may seek review of the administrative law judge’s decision at the Department’s Administrative Review Board.

§ 655.1102 What are the definitions of terms that are used in these regulations?

For the purposes of subparts L and M of this part:

Accepted for filing means that the Attestation and any supporting documentation submitted by the facility have been received by the Employment